

## **REMARKS**

The undersigned attorney thanks Examiner Tomaszewski for his careful review of this patent application. Reconsideration of the present application is respectfully requested in view of the following remarks. Claims 1-8, 17-19, 24-30, and 32-35 are currently pending in this Application with claims 9-16, 20-23, and 31 being canceled, claims 1-4, 6, 8, 17, 19, 24-25, 28, and 32 being amended and claims 34-35 being added. Prior to entry of this amendment, claims 1-33 were pending in the application and all were rejected.

### **Interview Summary**

The undersigned attorney thanks Examiner Tomaszewski and Examiner Thomas for their kind participation in an Examiner Interview held August 17, 2006. During the interview the Examiners and the undersigned attorney discussed the pending claims and the cited references. Final agreement was not reached as to the patentability of the pending claims because the Examiners wish to update the search prior to making a determination of patentability.

### **The 35 U.S.C. § 112 Rejections**

Claims 1-33 were rejected under 35 U.S.C. § 112 first paragraph as containing new matter. The Applicant respectfully submits that the pending claims are fully supported by the original disclosure. However, in order to advance the application to issuance, the Applicant has amended the claims to more closely follow the wording of the original disclosure.

Specifically, the Applicant has amended the claims to clarify that the program requirements are designed to reduce risks of accidents associated with the healthcare industry. This concept is fully supported in the original disclosure. See p. 3 ln. 17-23, p. 9 ln. 3-11. Accordingly, the Applicant respectfully submits that all of the claims are fully in conformance with 35 U.S.C. § 112.

Additionally, the Applicant respectfully submits the following support for claim 1:

Claim 1 claim element	Support in patent application
determining insurance program requirements designed to reduce risks of accidents associated with the healthcare industry;	page 6, lines 3-7; page 9, lines 3-11

formulating an insurance program containing the insurance program requirements;	Page 7, line 23
reducing risks of accidents associated with the healthcare industry by implementing procedures designed for the insured entity to meet the insurance program requirements;	Page 7, line 21 - Page 11, line 10
monitoring the results of the procedures to identify the conformance of the insured healthcare facility to the program requirements;	Page 9, line 22 - Page 10, line 12
identifying the conformance of the insured healthcare facility to the program requirements; and	Page 9, line 22 - Page 10, line 12
communicating data indicative of the conformance of the insured healthcare facility to an interested third party.	Page 11, lines 11-25

### **Brief Summary of the Claimed Invention**

The Applicant respectfully submits that the claimed invention is patentable over the cited references, as explained in greater detail below with reference to the specific rejections. The claimed invention is directed toward a system and method for improving the performance of a healthcare facility and reducing the insurance costs associated with the healthcare facility.

As described in the patent application, there are many risks associated with operating a healthcare facility. These risks may be reduced using various techniques directed toward fall prevention, wound care, documentation guidelines, nutritional issues, security issues, pharmacy/drug programs, sexual harassment programs, and other similar issues. See patent application p. 9 ln. 3-11. Typical healthcare facility insurance programs base insurance rates on a facility's past performance and past insurance claims as well as typical performance within the industry. The claimed invention provides a system and method for improving the performance of a healthcare facility by implementing a program designed to reduce the risks of accidents, thereby reducing the cost of insuring the facility. Such reduction in the cost of insuring the facility is achieved by the mandated parameters of the insurance program requirements through conformance and monitoring applications and third party participation. The program includes specific program requirements to be followed by the healthcare facility. Additionally, the healthcare facility's conformance with these program requirements is monitored to assure that the healthcare facility is following the program. See p. 9 ln. 12 - p. 10 ln. 23. By assuring that the

healthcare facility is following the program, the insurance company is able to reduce the risk of claims and thus can offer lower rates to the healthcare facility.

**The 35 U.S.C. § 103 Rejections based on DeTore in view of Ibarra**

Claims 1, 5-8, 9, 13, 16, and 28-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over DeTore in view of Ibarra.

DeTore is directed toward a method and apparatus for evaluating a potentially insurable risk. Specifically, DeTore teaches various methods of establishing insurance rates based on risk factors. For example, such risk factors may include a person's height and weight, whether the person has diabetes or hypertension, or whether the person participates in any hazardous activities. Each of these factors is converted to a "weighting" system to evaluate the total risk associated with the individual. See DeTore col. 5 ln. 19 - col. 6 ln. 9. DeTore does not, however, describe a system in which program requirements are established and monitored to assure that an insured behaves or operates in a particular low risk fashion. More specifically, DeTore does not in any way address healthcare facilities or create a program by which healthcare facility risks are reduced. Rather, DeTore describes a fairly typical insurance model wherein the insurance company estimates the risks of the insured and determines whether a policy may be issued and the appropriate rates for the policy.

Ibarra is directed toward a system and method for quantification of human performance factors. Specifically, Ibarra discloses a system that "enables a supervisor to quantify job performance characteristics" of an employee. See Ibarra Abstract. Notably, Ibarra is not related to the formulation of insurance programs or implementing procedures designed for the insured entity to meet the insurance program requirements, thereby reducing a risk associated with the insurance risk factor. Accordingly, Ibarra does not teach any of the elements of the claims.

DeTore describes a system for assessing risks of issuing an insurance policy and Ibarra describes a system for quantifying job performance of an employee. Accordingly, if one were to combine these two patents, the resultant invention would be a system which quantified the job performance of an insurance agent to assure that the agent's job was performed correctly. This is not what is claimed in the present invention.

Furthermore, there is no teaching in the art that would provide motivation to combine DeTore and Ibarra to yield the present invention. Accordingly, even if the DeTore and Ibarra did describe individual elements of the claimed invention, these references could not be combined to construct the present invention.

Claim 1 of the present invention is directed toward a method for providing improved performance of an insured healthcare facility. Specifically, Claim 1 is directed toward an embodiment of the present invention in which a program is formulated and procedures are implemented to reduce the risks of accidents associated with the healthcare industry. Such a program is highly desirable for both a healthcare facility and for an insurance company issuing a policy. Typically, the healthcare facility desires the best possible coverage at the lowest possible price. On the other hand, the insurance company sets its policy prices based on the risks it associates with the healthcare facility and the healthcare industry in general. The insurance company attempts to approximate the likelihood of a claim based on these risks and sets its premiums accordingly.

Using the present invention, an insurance company may offer a particular healthcare facility a reduced premium in exchange for abiding by certain program requirements designed to reduce the risks associated with the healthcare industry. Since the insurance company likely will not wish to trust the healthcare facility to faithfully follow the program, the present invention may be used to monitor the healthcare facility's adherence to the program. Then, the insurance company may determine how closely the healthcare facility is following the program and decide whether to maintain the reduced premium.

In order to highlight several of the distinctions between Claim 1 and the combination of DeTroe and Ibarra, the Applicant amended the claims to highlight the application to healthcare facilities and the use of a procedure to reduce risks associated with the healthcare industry. Specifically, Claim 1 now recites the elements of:

**determining insurance program requirements designed to reduce risks of accidents associated with the healthcare industry;**  
**formulating an insurance program containing ~~one or more~~ the insurance program requirements;**  
**reducing risks of accidents associated with the healthcare industry by implementing procedures designed for the insured entity to meet the insurance program requirements;**

**monitoring the results of the procedures to identify the conformance of the insured healthcare facility to the program requirements;**  
**identifying the conformance of the insured healthcare facility to the program requirements; and**  
**communicating data indicative of the conformance of the insured healthcare facility to an interested third party.**

The Applicant respectfully submits that the combination of DeTore and Ibarra does not relate to healthcare facilities and does not implement procedures designed for a healthcare facility to meet insurance program requirements and reduce a risks of accidents associated with the healthcare industry. Accordingly, the Applicant respectfully submits that the rejection based on the combination of DeTore and Ibarra should be withdrawn and Claim 1 is in condition for allowance. Additionally, the Applicant respectfully submits that Claims 5-8 are also in condition for allowance for the reasons stated above and for the further limitations contained therein.

#### **The 35 U.S.C. § 103 Rejections based on the combination of DeTore, Ibarra and Luchs**

Claims 2-3, 10-11, 17-19, and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ibarra in view of U.S. Patent No. 4,831,526 to Luchs (hereafter “Luchs”). The Applicant respectfully submits that Claims 2-3, 17-19, and 32 are patentable over the combination of DeTore, Ibarra and Luchs for the reasons stated above in conjunction with Claim 1. Additionally, Luchs is directed toward a system for writing and issuing insurance contracts, but does not disclose any of the steps highlighted above. For example, Luchs does not disclose the use of a procedure to reduce risks of accidents associated with the healthcare industry or monitoring a healthcare facility to identify the conformance of the healthcare facility to the program requirements. Accordingly, DeTore, Ibarra, and Luchs do not teach each and every limitation of Claims 2-3, 17-19, or 32 and these claims are in condition for allowance.

#### **The 35 U.S.C. § 103 Rejections based on the combination of DeTore, Ibarra and Walker**

Claims 4, 12, 14-15, 20-27, and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over DeTore and Ibarra in view of U.S. Patent No. 6,119,094 to Walker (hereafter “Walker”). The Applicant respectfully submits that Claims 4, 24-27, and 33 are patentable over the combination of Detore, Ibarra, and Walker for the reasons stated above in conjunction with Claim 1. Additionally, Walker does not disclose the use of a procedure to reduce risks of

accidents associated with the healthcare industry or monitoring a healthcare facility to identify the conformance of the healthcare facility to the program requirements. Accordingly, DeTore, Ibarra, and Walker do not teach each and every limitation of Claims 4, 24-27, or 33 and thus these claims are in condition for allowance.

### **Cancelled Claims**

Claims 9-16, and 20-23 have been cancelled in an effort to simplify the pending application. The Applicant respectfully submits that these claims were not removed based on any pending rejections, but rather to reduce the material to be discussed with the Examiner.

### **New Claims**

Claims 34 and 35 have been added as independent claims. Claim 34 contains additional details not claimed in the previously pending claims. The Applicant respectfully submits that all of the limitations in claim 34 are fully supported by the original specification. For example, claim 34 adds the limitations of calculating a performance score indicative of the conformance of the insured healthcare facility to the program requirements, communicating data indicative of the conformance of the insured healthcare facility to an interested third party, and implementing countermeasures to improve program conformance. These elements are supported in the patent application at least at page 10 lines 2 through 17.

Claim 35 is directed toward a method for improving performance of a healthcare facility by reducing risks of accidents in accordance with an embodiment of the present invention described in Fig. 3. Claim 35 is fully supported by Fig. 3 and its respective description on pages 7-11 of the original application. The Applicant respectfully submits that claim 35 is fully supported by the specification and is patentable over the cited references.

Additionally, the Applicant respectfully submits that claims 34 and 35 are in condition for allowance.

## **FEES**

Enclosed with this *Preliminary Amendment to RCE*, is an RCE, and a check for same. No claim fees are believed due. The Commissioner is authorized to charge Deposit Account No. 20-1507 for deficiencies in the payment of these fees.

## **CONCLUSION**

The foregoing is submitted as a full and complete response to the *Office Action* mailed June 20, 2006. It is respectfully submitted that claims 1-8, 17-19, and 24-35 are in condition for allowance and that each point raised in the *Final Office Action* with regard to these claims has been fully addressed. Therefore, it is respectfully requested that the rejections be withdrawn and that the case be processed to issuance in accordance with Patent Office Business.

If the Examiner believes that there are any issues that can be resolved by a telephone conference, or that there are any informalities that can be corrected by an Examiner's amendment, please contact James Schutz at 404.885.3498.

Respectfully submitted,

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